

November 30, 2011

To: Members of the Senate Committee on Financial Institutions and Rural Issues
From: Sen. Glenn Grothman
Re: Senate Bill 308

This is a modest and bipartisan bill that seeks to expand financial opportunities for local governments in Wisconsin.

Currently, a local government deposits tax revenues into a public depository. The local government can specify what type of account it uses, but other than a savings account or CD, they have little opportunity to make that money work for them.

This bill expands their options by allowing them to direct the public depository, either directly or through a third party, to re-deposit their money into other, more flexible money market accounts. This will allow local governments to earn more on money they have deposited with no increase in risk.



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To: Senate Committee on Financial Institutions and Rural Issues
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Re: SB 308, Deposit Placement Programs of Public Depositories

The League of Wisconsin Municipalities supports SB 308, giving municipalities another option for spreading public funds among several financial institutions to ensure that all of the municipality's funds are deposited in accounts covered by the Federal Deposit Insurance Corporation, which insures accounts up to \$250,000.

Many communities currently use the Certificate of Deposit Account Registry Service (CEDARS), which allows communities to obtain FDIC insurance coverage for funds that exceed \$250,000 by working with one bank to invest its funds in CDs from multiple financial institutions. SB 308 gives municipalities the additional option of placing public funds into interest bearing money market deposit accounts at multiple banks. The advantages of such an option would be greater liquidity and potentially slightly higher return on investment.

The bill creates an option for communities to use if they see an advantage to doing so. We urge the committee to recommend passage of SB 308.



Testimony of

Jay Risch

Representing the Wisconsin Bankers Association

Before the

Senate Committee on Financial Institutions and Rural Issues

Senate Bill 308

November 30, 2011

Chairman Grothman and Members of the Senate Committee on Financial Institutions and Rural Issues, my name is Jay Risch and I am the Director of Government Relations for the Wisconsin Bankers Association (WBA). I appreciate the opportunity to testify in favor of SB 308 today.

Established in 1892, WBA is the state's largest financial industry trade association, representing nearly 280 commercial banks and savings institutions, their nearly 2,300 branch offices and 27,000 employees.

SB 308 gives local governments additional prudent options for investing public funds.

Currently, local governments may invest public funds in certificates of deposit (CDs) in local Wisconsin banks. Local governments often find it advantageous to have their public dollars spread among several banks to take advantage of the full \$250,000 Federal Deposit Insurance Corporation (FDIC) insurance limit. These are dollars local Wisconsin banks then lend to individuals and small businesses in the community. Over a billion dollars of public funds are invested thusly in Wisconsin.

SB 308, would give local governments the additional option of placing public funds into interest-bearing money market deposit accounts at multiple banks. The advantage of this option for a local government would be greater liquidity and the potential for a slightly higher return on investment.

Again, on behalf of the Wisconsin Bankers Association I thank you for the opportunity to testify today and would be happy to answer any questions.



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

RECEIVED

FEB 15 2005

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February 10, 2005

The Honorable Jean Hundertmark
State Representative, 40th Assembly District
State Capitol
Box 8952
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Kim L. Kindschi
Executive Vice President
Wisconsin Bankers Association
4721 South Biltmore Lane
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Jean *Kim*
Dear Representative Hundertmark and Vice President Kindschi:

You each have asked my opinion as to whether Wis. Stat. § 66.0603(1m)(a) permits certain Wisconsin governmental subdivisions to invest public funds in FDIC-insured banks and savings and loan associations that are authorized to do business in Wisconsin and are participating in the Certificate of Deposit Account Registry Service, or CDARS. For the reasons that follow, I believe the answer is yes.

Section 66.0603(1m)(a)1. provides as follows:

(1m) Investments. (a) A county, city, village, town, school district, drainage district, technical college district or other governing board ... may invest any of its funds not immediately needed in any of the following:

1. Time deposits in any credit union, bank, savings bank, trust company or savings and loan association which is authorized to transact business in this state if the time deposits mature in not more than 3 years.

The question arises because CDARS uses institutions not authorized to do business in Wisconsin. You have described CDARS as enabling a Wisconsin participating institution to allocate a customer's deposits in excess of the FDIC coverage limits to non-Wisconsin institutions. The Wisconsin governmental subdivisions get the advantage of an additional investment option as well as the benefit of having that excess covered by the FDIC insurance protection.

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You have advised me that while the excess goes to an institution not authorized to do business in Wisconsin, the Wisconsin institution immediately receives a reciprocal deposit from the non-Wisconsin institution in an equal amount. The transfer is paperless. The effect is to retain the amount of the original deposit in the Wisconsin-authorized institution. The Wisconsin institution has the full amount of the original deposit available to it to meet the credit needs of its community. It remains custodian of the original deposit and uses a New York Bank as sub-custodian to facilitate the transfers.

I note that the Department of Financial Institutions has determined that nothing in Wisconsin Statutes chapters 221, 214, and 215 prevents state-chartered banks, savings banks, and savings and loan associations from participating in CDARS. In addition, you have advised that the FDIC has determined that the insurance coverage passes through to the original depositor as the beneficial owner of the time deposits, thereby maximizing the depositors' insurance protection. I am aware that the Pennsylvania Attorney General has interpreted this program as being authorized under Pennsylvania law but that the Louisiana Attorney General has come to the opposite conclusion under Louisiana law.

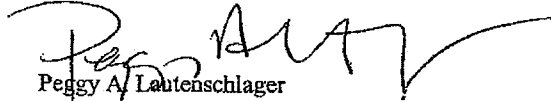
Accepting your description of the program, I turn to an analysis of the statute. There can be no doubt that the original deposit is "in" a financial institution authorized to do business in the state. Although there is a subsequent transfer of funds to an institution not so authorized, it is paperless as is the immediate reciprocal replacement of those funds. The institution remains the custodian of the original deposit. The statute on its face does not clearly answer the question whether these subsequent events change the investment from one "in" a Wisconsin-authorized institution. Although I believe the answer is no, arguably the statute is ambiguous and could be interpreted differently. Therefore, it is necessary to inquire into the statutory objectives. See *State v. Jensen*, 2000 WI 84, ¶ 12, 236 Wis. 2d 521, 613 N.W.2d 170 ("The objective of statutory interpretation is to discern the intent of the legislature by relying on the plain language of the statute when possible and examining legislative history and statutory objectives if there is ambiguity").

I believe CDARS meets public policy and legislative objectives for the following reasons. The Wisconsin-authorized institutions remain under the same Wisconsin regulatory controls as to the equivalent amount of the original deposit. They can use the same amount of money for community credit needs. The program advances business opportunities for local institutions. The governmental subdivisions have the advantage of increased FDIC insurance protections and increased investment options. Participation in CDARS, therefore, helps fulfill statutory objectives.

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Accordingly, in my opinion, the governmental subdivisions may invest in the financial institutions identified in § 66.0603(1m)(a) that participate in CDARS.

Very truly yours,



Peggy A. Lautenschlager
Attorney General

**FDIC**

Federal Deposit Insurance Corporation
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Legal Division

July 29, 2003

Mark T. Young, Esquire
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Dear Mr. Young:

This is in response to your request for an opinion on the FDIC deposit insurance coverage available for deposits purchased through a program sponsored by Promontory Interfinancial Network ("Network"). Entitled the "Certificate of Deposit Account Registry Service" ("CDARS"), the program is a deposit-placement service designed to allow FDIC-insured depository institutions to accept deposits of more than \$100,000 and obtain full coverage for the depositor by spreading the funds among as many separate FDIC-insured institutions as necessary so that no institution holds more than \$100,000 (principal plus interest) for each depositor. Your view is that FDIC insurance would apply to all deposits placed through the CDARS program, assuming the program is operated as indicated in the materials enclosed with your letter.

The applicable materials you provided to us are marked "02/03 Version." The "Participating Institution Agreement" defines a *Participating Institution* as an institution participating in the CDARS program and indicates that a *Participating institution* may act from time to time in one of three capacities: a *Relationship Institution* – an institution that submits its depositors' funds for placement through CDARS and acts as custodian with respect to its depositors' certificates of deposit ("CDs"); an *Issuing Institution* – an institution that issues CDs to depositors for funds placed with the *Participating Institution* through CDARS; and a *Surplus Institution* – an institution that on an order date is willing to accept time deposits in excess of the funds, if any, it has submitted for placement through CDARS on that order date.

"The CDARS Deposit Placement Agreement" provides the terms and conditions upon which the *Relationship Institution* will place a depositor's funds with other FDIC-insured institutions (*Issuing Institutions*) that have entered into similar contracts with the Network. The agreement states that the *Relationship Institution* will act as the depositor's agent in placing funds in CDs with the *Issuing Institutions*. It indicates that: the *Relationship Institution* will act as the depositor's custodian with respect to the CDs and has entered into an agreement with The Bank of New York ("BNY") to act as the *Relationship Institution's* sub-custodian with respect to the CDs for which the

Relationship Institution is acting as the depositor's custodian; each CD for which the *Relationship Institution* is acting as the depositor's custodian will be recorded on the *Issuing Institution's* records in the name of the sub-custodian, BNY; the CD will be recorded on BNY's records in the *Relationship Institution's* name; and the CD will be recorded on the *Relationship Institution's* records in the depositor's name.

The Participating Institution Agreement contains these relevant disclosure and recordkeeping provisions:

Section 9.01 Recordkeeping for FDIC Purposes

As custodian for your Depositors, you will maintain, in accordance with applicable published requirements of the FDIC, a record of (i) the name, address, taxpayer identification number, and amount of the account of each Depositor for which CDs have been issued through CDARS and (ii) any representative capacity in which the Depositor may be acting.

Section 9.04 Recordation of CDs

Each CD that you issue will be established on your deposit account records in the name of "[Name of Sub-custodian], acting as agent for itself and others, each acting for itself and others," or in such other manner of recordation as may be approved from time to time by the FDIC to permit "pass-through" of deposit insurance to the beneficial owner of the CD.

The agreement between BNY (the sub-custodian) and the *Participating Institutions* specifies that the sub-custodian will:

- 2. Record each CD as issued by you [the issuing institution] in the name of "BNY, as agent for itself and others, each acting for itself and others" (or such other manner of recordation as may be approved from time to time by the FDIC to permit "pass-through" of deposit insurance) (Schedule A)*

Discussion

Deposit insurance is provided under the Federal Deposit Insurance Act, as implemented by the FDIC's regulations, based on the rights and capacities in which deposits are held at FDIC-insured depository institutions. 12 U.S.C. §1821(a) and 12 CFR Part 330. For deposits held by an agent for its principals at FDIC-insured

institutions, such as in the CDARS program, deposit insurance is said to "pass through" the holder of the account (the agent) to the owners of the funds (the principals).

12 CFR §330.7. The same logic applies where an agent is acting for multiple owners/principals and where there are multiple levels of agency relationships. The FDIC's deposit insurance regulations impose specific requirements for funds held in a fiduciary relationship. 12 CFR §330.5(b). Essentially, as long as the institution's deposit account records indicate that the funds are held in an agency capacity and the institution's records, the agent's records or an authorized third-party's records, maintained in good faith and in the ordinary course of business, designate the ownership interest of the principal(s) in the account, the FDIC will insure the funds on a pass-through basis as if each principal had placed his or her respective funds directly with the applicable depository institution.

For deposits held in multi-tiered fiduciary relationships, such as in the CDARS program, special rules apply. One way to satisfy the disclosure and recordkeeping requirements is for the deposit account records of an insured institution to indicate the existence of each and every level of the fiduciary relationships and disclose at each level the names and interest of the person (s) on whose behalf the party at that level is acting. Another way is to: expressly indicate on the deposit account records of the insured institution that there are multiple levels of fiduciary relationships; disclose the existence of additional levels of fiduciary relationships in records by parties at subsequent levels; and disclose at each of the levels the names and interests of the persons on whose behalf the party at that level is acting. 12 CFR §330.5(b)(3).

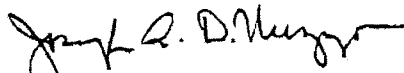
The CDARS program is a self-described deposit-placement service in which participating institutions act as agents for depositors in placing funds at other participating institutions. As specified in the above-quoted provisions of the applicable CDARS documents: (1) the *Issuing Institutions'* records will indicate that the deposits are being held by BNY "acting as agent for itself and others, each acting for itself and others"; (2) BNY's records will record each CD held by BNY as sub-custodian for the *Relationship Institution* as custodian for its depositors; and (3) the *Relationship Institution's* records (and/or an authorized third party's records) will contain the name, address and other identifying information of each depositor for which CDs are purchased through CDARS. This methodology conforms to the disclosure and recordkeeping requirements in section 330.5(b) of the FDIC's regulations. As such, the FDIC's requirements for agency pass-through deposit insurance coverage would be satisfied and, thus, the FDIC would regard each depositor/principal to be the insured party per participating institution for deposit insurance purposes.

As explained in the CDARS materials, please note that if the same depositor/principal also has an ownership interest in other deposits at the same *Issuing Institution*, those deposits would be added to his or her ownership interests in deposits (held in the same ownership capacity) placed through the CDARS system and insured in the aggregate to a limited of \$100,000.

In summary, based on the CDARS information in the materials enclosed with your letter, we agree that deposits placed through the CDARS system would be insured on a pass-through basis under the FDIC's rules on the insurance coverage of agency or custodial accounts. For this coverage to be available, the recordkeeping and other applicable procedures specified in the materials would have to be followed. These views are based on the information contained in the version of the CDARS materials enclosed with your letter. Revisions to those documents on deposit ownership and recordkeeping may affect the deposit insurance coverage results. Also, this opinion addresses only the deposit insurance implications of the CDARS program. It is not intended to address any other legal or policy issues.

I hope this is fully responsive to your inquiry. Feel free to call me 202-898-7349 with any additional questions or comments.

Sincerely yours,


Joseph A. DiNuzzo
Counsel